

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 213 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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KISHENCHAND OCHIRAM

Versus

HEIRS OF PARMANAND T SHARMA

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Appearance:

MR. KAMAL MEHTA FOR MR PM THAKKAR, Counsel for the  
Petitioner  
Respondent served

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 20/01/98

ORAL JUDGEMENT

This is tenant-defendant's revision under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Act') against the judgement and decree dated 27.12.1982 passed by the Joint District Judge, Rajkot whereby the learned judge confirmed the judgement and decree for eviction dated 28.7.1980 passed by the Small Causes Court, Rajkot.

2. The plaintiff filed a suit for eviction of defendant-petitioner from the suit premises on the ground that the tenant was in arrears of rent for a period more than six months from 1.8.1974 to 31.1.1977. He gave a

notice on 1.2.1977 demanding the rent under section 12(2) of the Act. Reply to the notice was given on 19.2.1977 by the defendant. He raised disputes regarding standard rent. He also filed an application under Section 11(3) of the Act on 11.3.1977 for fixation of the standard rent. According to the defendant, the standard rent of the suit premises could not be more than Rs. 10.25 per month as against contractual rent of Rs. 30/- per month. The said application was registered as CMA No. 172 of 1977. The court fixed ad-interim standard rent at Rs. 10.25 per month by ex-parte order. The tenant was also directed to deposit the amount of rent for the period 1.8.1974 to 14.4.1977. He was further directed to deposit the rent regularly for future period at the same rate on or before 10th day of every month after the rent becomes due. The defendant in pursuance of the said order deposited the amount of Rs. 328/- on 14.4.1977 which was a full deposit as per the directions. The plaintiff filed suit for eviction on 31.3.1977. The issues were framed on 10.1.1979. Thus, the said date was taken as the first date of hearing. The trial court decreed the suit by judgement dated 28.7.1980. The court also fixed the standard rent as Rs. 30/- per month inclusive of all the taxes. However, the court further said that the standard rent will be Rs. 20/- per month inclusive of all the taxes from the date the plaintiff gets possession of osary portion. It may be said that the trial court decreed the suit for possession only with respect to a portion of the rented premises i.e. osari. The landlord and tenant filed separate appeals against the said judgement.

3. The appeal filed by the petitioner-defendant was dismissed in toto by the judgement and decree dated 27.12.1982. The appeal of the plaintiff was partly allowed so far as it relates to eviction of the part of the premises is concerned. The finding with respect to the fixation of the standard rent was confirmed.

4. As to whether petitioner-tenant is entitled to protection under Section 12(3)(b) is concerned the first appellate court found that the tenant deposited rent due as per the interim direction of the court before first date of hearing, but there was breach of second part of Section 12(3)(b) inasmuch as that the tenant was not 'regular' in payment of rent. Since the suit is prior to 1985 amendment, and Division Bench of this court has held that amendment does not have retrospective effect, it is to be seen whether the tenant petitioner was regular in payment?

5. The petitioner deposited entire rent due on 14.4.1977. The first date of hearing was 1.9.1979 and tenant deposited on 5.7.1979 a sum of Rs. 123/- for the period 1.4.1979 to 31.3.1980. The suit for possession was decreed on 28.7.1980. The rent was paid as per the interim standard rent fixed at Rs. 10.25 per month. Standard rent was fixed at the conclusion of the trial at the rate of Rs. 30/- per month. Thus, during the pendency of the appeal, payment was made as indicated in the table given below:-

Date of order	Amount(Rs.)	Month covered
5-9-1980	Rs. 30/-	August 1980
3.2.1981	Rs. 150/-	Sept. to Jan.1981
5.3.1981	Rs. 30/-	February 1981
8.8.1981	Rs. 150/-	March to July, 1981
9.11.1981	Rs. 90/-	August to October 1981
2.12.1981	Rs. 30/-	November 1981
10.4.1982	Rs. 120/-	December 1981 to March, 1982
5.8.1982	Rs. 120/-	April to July, 1982
6.9.1982	Rs. 30/-	August 1982

6. The word 'regularly' as contained in Section 12(3)(b) has been interpreted by the Supreme Court in the case of MOHAN LAXMAN HEDE VS. NOORMOHAMED ADAM SHAIKH reported in AIR 1988 SC 1111. The apex court has taken the view that it is not the mathematical punctuality of clock-like precision or regularity. Substantial proximity to the sequence of time or interval at which the payment fall due were to fall within the purview of 'regularity'.

7. In the instant case it is not in dispute that entire arrears of rent was deposited on the first date of hearing and thereafter advance rent was deposited for the period ending March, 1980. The suit was decided by the judgement and decree dated 28.7.1980. Tenant deposited the decretal amount of Rs. 1432.25 on 28.8.1980. During pendency of appeal there is of course delay on certain dates in payment of rent but it cannot be said that the tenant was irregular in payment of rent. On 5.9.1980 rent of Rs. 30/- was deposited for the month of August 1980. In February 1981 rent has been deposited for the period September to January, 1981. February 1981 rent has been deposited in March, 1981. In August rent for the period March to July 1981 has been deposited. On

an overall consideration and keeping in view the ratio of judgement of the apex court in Mohan Laxman's case it cannot be said that the petitioner was not regular in making the rent. In view of this, the court below has committed an error in considering the payment of rent was not regular. Thus, on the facts of the case, the petitioner is entitled to protection of Section 12(3)(b) of the Bombay Rent Act.

8. In view of the aforesaid, the Civil Revision Application is allowed and the judgement and decree dated 27.12.1982 passed by the Joint District Judge, Rajkot, confirming the judgement and decree passed by the Judge, Small Causes Court, Rajkot dated 28.7.1980 in rent Suit No. 353 of 1979 are quashed and set aside. The fixation of standard rent at the rate of Rs. 30/per month remains undisturbed. Rule is made absolute to the aforesaid extent.

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